

**TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION**

**SERIES 6
PRIVATE GAIN**

§158-6-1. General Provisions.

1.1. Scope. -- These legislative rules establish the guidelines concerning private gain for persons covered by the WV Governmental Ethics Act.

1.2. Authority. -- W. Va. Code §6B-2-5(b)

1.3. Filing Date. -- April 29, 1992

1.4. Effective Date. -- June 1, 1992

§158-6-2. Exceptions to Using Office for Private Gain.

2.1. The performance of certain acts does not constitute a public official's or public employee's improper use of office for private gain if they perform:

- a. usual and customary duties associated with the office or position, or
- b. services relating to the advancement of public policy goals, or
- c. constituent services without compensation.

2.2. A public official acting in his or her capacity as a public official may make an inquiry for information on behalf of a constituent provided that no fee, reward, or other thing of value is directly or indirectly accepted by the public official. The provisions of this subsection shall not apply to a public official acting in his or her private capacity.

2.3. When public officials and public employees whose job responsibilities anticipate travel outside the State to attend seminars or inspect certain facilities or products on behalf of their governmental agency this is considered performing usual and customary duties associated with the person's office.

§158-6-3. Nepotism.

3.1. As used in this section, the term "nepotism" means favoritism shown or patronage granted by a public official or public employee to relatives or cohabitating sexual partners in employment matters without giving public notice and consideration to other applicants or qualifications required to perform the job.

3.2. "Relatives" are defined as individuals who are related to the public official or public employee as father, mother, son, daughter, brother, sister, or spouse.

3.3. A public official or public employee may avoid the appearance of nepotism by following these steps in hiring a relative or cohabitating sexual partner for a public position:

- a. The public should be given reasonable advance notice of the availability of the job.

1. The notice should include a description of the job responsibilities, the qualifications required, the pay and the manner in which application for the job can be made.

2. The method of giving notice will of course vary from job to job but there must be reasonable public awareness of the availability of the job. Newspaper want ads and notices on the bulletin boards in public areas of the building are the most obvious and effective methods.

3. The notice must be made soon enough to give those members of the public who are interested in the job an opportunity to make application.

b. An objective, independent third party should be involved in the selection where a cohabitating sexual partner or family member is among those who have made application for the job.

1. To the extent possible, the public official or public employee should stay out of the selection process altogether. If he or she is one of several people with the authority to hire, others with authority should make the selection. If appropriate, the matter should be handled by his or her supervisor, or in the case of an elected official by a qualified person in another office.

2. A public official or public employee should at least have some independent person take part in the selection. He or she should avoid using a subordinate for the independent person.

3. If a public official or public employee must share in the decision, he or she should exercise his or her best objective judgment in making the selection, and be prepared to justify his or her selection.

3.4. All hiring by public officials and public employees of relatives prior to the twenty-ninth day of February, 1992 is not subject to review under the ethics act, in Chapter 6B of the West Virginia Code.

3.5. A public official should not use his or her position for the private gain of a relative or cohabitating sexual partner by improperly giving bonuses, raises or other employment benefits to such person.

3.6. It is improper for a public official or public employee to terminate the employment of a person without sufficient cause for the purpose of hiring a relative, friend or political supporter.

§158-6-4. Use of "Subordinate" for Private Gain.

4.1. After work hours - Public officials and public employees shall not use subordinate employees for their private gain as an implied or express condition to their continued employment. An example of prohibited conduct would be a public official requiring a subordinate employee to perform personal errands for the official in order to maintain his or her public employment.

4.2. During work hours - Public officials and public employees shall not use subordinate employees during work hours to perform private work or provide personal services for their benefit. An example of this would be a public employee supervisor requiring state employees to repair a garage or pave a driveway for the supervisor during work hours. This subsection does not apply to de minimis work or services.

§158-6-5. Use or Removal of Government "Property".

5.1. Removal - Public officials and public employees shall not remove government property from the work-place for their private benefit.

5.2. Improper Use - Public officials and public employees shall not use government property for

personal projects or activities that result in private gain. This subsection does not apply to the de minimis use of government property.

§158-6-6. Kickbacks.

It is unlawful for a public official or public employee to accept any money or thing of value from any person for providing business or other benefits to that person through the public official's or public employee's governmental agency or as a result of his influence and control.

§158-6-7. Bribes.

It is unlawful for a public official or employee to receive money or any thing of value from any person for the purpose of influencing or persuading the official to perform his duties in a manner to benefit such person.

§158-6-8. Private Work During Public Work Hours.

Full-time appointed public officials and part-time and full-time public employees may not receive private compensation for performing private work during public work hours. This section shall not apply to de minimis private work.

§158-6-9. Exemption Categories.

Certain public officials or public employees bring to their respective offices or employment their own personal prestige, their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. The requirements to obtain an exemption and avoid improperly using their office for private gain are set out below:

- a. the public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state;
- b. the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and
- c. the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.